



HOWARD COUNTY DEPARTMENT OF PLANNING AND ZONING
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February 21, 2007

TECHNICAL STAFF REPORT

*Petition Accepted on January 9, 2007
Planning Board Meeting of March 29, 2007
County Council Hearing to be scheduled*

Case No./Petitioner: ZRA-77 – Charles C. Feaga, Councilman

Request: To amend and add certain regulations in Section 103: Definitions, Section 104: RC District, Section 105: RR District, and Section 131: Conditional Uses in order to establish a new land use category called Age Restricted Accessory Dwelling Unit to be allowed as a Conditional Use in the RC and RR Districts, to establish specific criteria for this new category, and to establish setback requirements to be applied to such an accessory dwelling.

Department of Planning and Zoning Recommendation:

DENIAL

I. DESCRIPTION OF PROPOSAL

- **The Petitioner proposes several amendments to the Zoning Regulations. Each proposed amendment is generally described as follows:**
 1. The first amendment would be to add two new definition items in Section 103 in order to define the term “Dwelling, Age Restricted Accessory Dwelling Unit”, and to provide a referral to that definition under the term “Age Restricted Accessory Dwelling Unit”.
 2. The second amendment would amend the Bulk Regulations subsections in both the RC District and the RR District to add structure setback requirements specifically for Age Restricted Accessory Dwelling Units.
 3. The third amendment would add to Section 131.N. a new Conditional Use category and specific criteria necessary for approval of an Age Restricted Accessory Dwelling Unit, and to specify that such a use may be granted in the RC or RR Districts.
- **The subsections proposed to be amended and the amendment text as proposed by the Petitioner is as follows, except that the text of the proposed amendments to the Bulk Requirements of the RC and RR Districts is not recreated here, but instead, this topic is addressed in a descriptive note. For the precise proposed text of the amendments to the Bulk Requirements, please refer to Attachment A (CAPITALS indicates text to be added:)**

1. Section 103.A.2.2

AGE RESTRICTED ACCESSORY DWELLING UNIT: SEE “DWELLING, AGE RESTRICTED ACCESSORY DWELLING UNIT.”

Section 103.A.40.1

DWELLING, AGE RESTRICTED ACCESSORY DWELLING UNIT: A DETACHED BUILDING DESIGNED AND ARRANGED FOR USE AS AN INDEPENDENT DWELLING UNIT AND WHICH IS ACCESSORY TO A SINGLE FAMILY DETACHED DWELLING. AGE RESTRICTED ACCESSORY DWELLING UNITS ARE SUBJECT TO CONDITIONAL USE APPROVAL AND ARE DESIGNED FOR AND RESTRICTED TO OCCUPANCY BY HOUSEHOLDS HAVING AT LEAST ONE MEMBER WHO IS 55 YEARS OF AGE OR OLDER AND WHO IS ALSO A PARENT OR SIBLING OF AN OWNER OF THE PRINCIPAL SINGLE FAMILY DWELLING UNIT.

2. Section 104.E. and Section 105.E.

These sections are the Bulk Requirements sections of the RC and RR Districts. Other Conditional Use categories which require special setbacks or other bulk requirements have those requirements contained within the specific criteria section of 131.N., where they may not be adjusted by the variance process. The Petitioner proposes an unprecedented change whereby the setback requirements to be applied to any Age Restricted Accessory Dwelling Unit would be specified in the standard Bulk Requirements section of the RC and RR Districts instead, where they could be adjusted by the variance process. The essence of the structure setbacks proposed by the Petitioner is that the setback for any Age Restricted Accessory Dwelling Unit would be exactly the same as any setback requirement applied to a principal structure, in both zoning districts.

3. Section 131.N.1.1

AGE RESTRICTED ACCESSORY DWELLING UNIT

A CONDITIONAL USE MAY BE GRANTED IN THE RR OR RC DISTRICT FOR AN AGE RESTRICTED ACCESSORY DWELLING UNIT, PROVIDED THAT:

- A. THE MINIMUM LOT SIZE SHALL BE GREATER THAN 3.5 ACRES.
- B. THE FLOOR AREA OF THE AGE RESTRICTED ACCESSORY DWELLING UNIT SHALL NOT EXCEED 1200 SQUARE FEET. IN THE EVENT THAT THE AGE RESTRICTED ACCESSORY DWELLING UNIT IS CONTAINED WITHIN A LARGER STRUCTURE THAT IS ALSO UTILIZED FOR OTHER PERMITTED PURPOSES WITHIN THE DISTRICT, THEN THE FLOOR AREA

OF THE STRUCTURE OCCUPIED BY THE AGE RESTRICTED ACCESSORY DWELLING UNIT SHALL NOT EXCEED 1200 SQUARE FEET.

- C. THE AGE RESTRICTED ACCESSORY DWELLING UNIT SHALL BE DESIGNED FOR AND RESTRICTED TO OCCUPANCY BY HOUSEHOLDS HAVING AT LEAST ONE MEMBER WHO IS 55 YEARS OF AGE OR OLDER AND WHO IS ALSO A PARENT OR SIBLING OF AN OWNER OF THE PRINCIPAL SINGLE FAMILY DWELLING UNIT.
- D. VEHICULAR ACCESS TO THE AGE RESTRICTED ACCESSORY DWELLING UNIT SHALL BE PROVIDED BY MEANS OF A SHARED DRIVEWAY ALSO SERVING THE PRINCIPAL SINGLE FAMILY DWELLING UNIT.
- E. THE AGE RESTRICTED ACCESSORY DWELLING UNIT SHALL BE CONSTRUCTED ENTIRELY WITHIN A 200 FOOT RADIUS OF THE PRINCIPAL SINGLE FAMILY DWELLING UNIT. THE HEARING AUTHORITY MAY EXTEND THIS CONSTRUCTION RADIUS TO A GREATER DISTANCE IF IT IS ESTABLISHED THAT THE EXTENSION OF THE CONSTRUCTION RADIUS WILL NOT ADVERSELY AFFECT NEIGHBORING PROPERTIES DUE TO VISUAL IMPACT, NOISE, DUST, ODORS OR OTHER CAUSES.
- F. ONLY 1 ACCESSORY DWELLING [sic] UNIT MAY BE APPROVED FOR ANY LOT, REGARDLESS OF LOT SIZE.
- G. A DECISION AND ORDER APPROVING AN AGE RESTRICTED ACCESSORY DWELLING UNIT SHALL AS A CONDITION OF APPROVAL REQUIRE THE PETITIONER TO RECORD COVENANTS ENFORCING THE AGE RESTRICTIONS REQUIRED FOR THIS CONDITIONAL USE UPON THE PROPERTY. THESE COVENANTS SHALL BE RECORDED AMONG THE LAND RECORDS FOR HOWARD COUNTY WITHIN 15 DAYS OF THE EXPIRATION OF ANY APPLICABLE APPEAL PERIOD AND SHALL BE ENFORCABLE [sic] BY ANY ADJACENT PROPERTY OWNER.

II. EXISTING REGULATIONS

- This would be a new category of residential land use, and therefore, there is no current provision in the Zoning Regulations to allow a detached accessory dwelling of the type proposed.

II. EXISTING REGULATIONS (continued)

- The only kinds of detached accessory dwelling units that are currently allowed in the RC or RR Districts are farm tenant houses and caretaker's houses on properties that are 50 acres or greater in area.

A current Conditional Use category allows farm tenant houses to be approved on RC or RR properties of at least 25 acres but less than 50 acres.

■ **Other types of accessory dwelling units are prohibited in detached structures.**

An accessory apartment dwelling must be either within a principal dwelling, or if added to a principal dwelling it must share a common wall with the principal dwelling. Such an accessory apartment dwelling cannot be separated from the principal dwelling by a breezeway or a garage. Detached garages are specifically prohibited from including any residential uses.

■ **The existing regulations already provide good opportunities for persons to establish accessory dwellings on their properties for older relatives.**

Accessory apartment dwellings are permitted by right in any owner-occupied principal single-family detached dwelling, although such dwellings are somewhat limited in size as the largest cannot exceed 800 square feet. In instances when a larger accessory dwelling is desired, there is the potential for a Two-family Dwelling through the Conditional Use process, and this has proved to be quite useful and relatively easy for many people for many years.

III. BACKGROUND INFORMATION

A. Scope of Proposed Amendments

- The proposed amendments would be applicable to properties larger than 3.5 acres in the RC or RR Districts, which would mean that there are likely a considerable number of properties that would qualify for the use.

B. Agency Comments

- See attached comments on the proposal from the following agency:

1. Department of Inspections, Licenses and Permits

IV. EVALUATIONS AND CONCLUSIONS

A. Relation to the General Plan

- The Petitioner asserts that the proposed amendments are in harmony with the General Plan policies encouraging adequate housing for the elderly, and although this may be the case, having a Conditional Use category of the type proposed will likely not augment the potential for age-restricted housing much beyond the potential that exists currently in the regulations.

IV. EVALUATIONS AND CONCLUSIONS (continued)

A. Relation to the General Plan (continued)

In the past, in cases when a property owner wanted to create an accessory dwelling for an older relative, and wanted this accessory dwelling to be larger than a standard accessory apartment dwelling, the existing Conditional Use

category for Two-family Dwelling has been used to good effect. Even so, it has not been used very often, and typically the Department might receive perhaps one application for a Two-family Dwelling every year for the purpose of creating additional living space for an older relative.

- **Age-restricted adult housing opportunities in western Howard County are much better served by the standard Age-restricted Adult Housing Conditional Use category, which can allow up to one such dwelling unit per each net acre, provided that there is a minimum of 20 dwellings on a minimum of 20 acres.**

B. Relation to the Zoning Regulations

- **On the basis of the fundamental “one dwelling unit per lot” standard established approximately 30 years ago, the Zoning Regulations have always been very limiting in the opportunities for any type of accessory dwelling unit, and are extremely limiting in opportunities for detached accessory dwelling units.**

An example for detached accessory dwelling units is that even with a farm property of 50 or more acres, one would be limited to only one detached farm tenant house for every 25 acres as a matter of right, and the farm tenant house must be occupied by at least one person who is a farm employee on that farm. With a farm property of at least 25 acres, one can apply for a Conditional Use for one farm tenant house, but below 25 acres this is impossible. And even on a property of greater than 50 acres, one is not allowed to create an accessory apartment dwelling in a detached building or garage.

- **There are several reasons why it is best to be cautious in allowing any type of detached accessory dwelling, but one principal one is that even if a detached accessory dwelling may be intended and established for a worthy purpose such as to serve a targeted housing need, as time goes by and properties are sold and resold, that original intended purpose may become long forgotten, and the established “accessory dwelling” becomes viewed as just another dwelling, and one that may be used for general rental purposes.**

It could be pointed out that there are always regulations to govern and limit the use of any detached accessory dwelling unit, but confidence in this is lessened by the reality that it is extremely difficult to enforce such regulations over time, mainly because the Department of Planning and Zoning has no oversight over housing rental activities.

IV. EVALUATIONS AND CONCLUSIONS (continued)

B. Relation to the Zoning Regulations (continued)

In the case of the proposed amendments, even with the stated age restrictions and the recorded covenants intended to maintain these age restrictions, over time these age restrictions and even the existence of the covenants may become forgotten or unknown to adjacent property owners.

- **There is no known compelling need, nor even a slightly pressing need, for a new Conditional Use category of the type proposed. As noted, persons desiring to create living space for an older relative may already do so by adding space to the principal dwelling either by means of an accessory apartment dwelling or by means of a Conditional Use for a Two-family Dwelling.**

Although there is nothing that prevents an attached accessory dwelling like these to eventually be used for purposes other than providing living space to an older relative, it is more likely that such added space will be converted for use as a part of the principal dwelling after the need for the accessory dwelling purposes has ended. Also, from the exterior, a property with an attached accessory dwelling will still have the appearance of a single principal building.

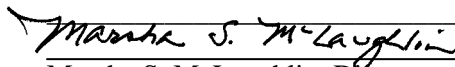
V. RECOMMENDATION **DENIAL**

For the reasons noted above, the Department of Planning and Zoning recommends that ZRA-77 as noted above, be **DENIED**.

With the understanding that the following comments are not intended to imply any type of support for the proposed amendments, in the event there is a majority supporting the concept of the amendments, there are several issues that should be considered:

1. A more proper term would be "Age Restricted Accessory Dwelling". There is no need to add "unit" to this term.
2. Once the required age restrictions have been established as part of the formal definition of the use, there is no reason to repeat these age restrictions as a specific criteria in Section 131.N. If the use does not comply with the definition, it cannot be approved.
3. Any setback requirements should be within the specific criteria for the Conditional Use category, and not within the standard bulk requirements for the RC and RR Districts.
4. The proposed text specifies that the use is limited to parents or siblings of an owner of the principal dwelling, but it does not specify that the owner has to live on the property. It would be prudent if the use was only allowed on properties that are owner occupied.

This file can be viewed by the public at our Front Service Counter in the George Howard Building, 3430 Courthouse Drive, Ellicott City MD, 8:00 a.m. to 5:00 p.m. Monday through Friday.


Marsha S. McLaughlin, Director

02/15/07
Date

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